

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1803

Introduced by Assembly Member Skinner

February 18, 2014

An act to amend Section ~~142.7~~ of 6716 of, and to add Sections 6717.1, 6717.2, 6717.3, 6717.4, 6717.5, and 6717.6 to, the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1803, as amended, Skinner. Occupational ~~Safety and Health Standards Board~~. *safety and health: lead-related construction registration program.*

Existing law requires the proposal, review, and adoption of standards and requirements to protect the health and safety of employees who engage in lead-related construction work.

This bill would establish a registration program that, with certain exceptions, would require employers and contractors who perform lead-related construction work, as defined, to register with the Division of Occupational Safety and Health before commencing work. The bill would require payment of an application fee for registration in an amount determined by the division as prescribed and would require annual renewal of the registration with the payment of a renewal fee established by the division. Under the bill, those fees would be deposited into the Lead Contractor Registration Fund, which the bill would create, with the moneys in the fund to be used, upon appropriation, for the purpose of investigating, registering, and renewing registrations for lead-related construction work. The bill would require an application to include specified information and a declaration that any information

provided by the applicant is genuine, true, and correct to the best of the applicant's knowledge, and would impose a civil penalty for false statements, enforceable by a public prosecutor. The bill would require the division to deny an application if it makes a specific determination and would authorize an employer or contractor to appeal that denial to the Director of Industrial Relations. The bill would establish administrative penalties to be imposed by the division for violations of these provisions.

~~Existing law requires the Occupational Safety and Health Standards Board within the Department of Industrial Relations to adopt an occupational safety and health standard for the state concerning hazardous substance removal work in accordance with prescribed requirements.~~

~~This bill would make nonsubstantive changes to those requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 6716 of the Labor Code is amended to*
- 2 *read:*
- 3 6716. (a) For the purposes of ~~this division~~, Sections 6717 to
- 4 6717.6, inclusive, "lead-related construction work" means any of
- 5 the following:
- 6 ~~(a)~~
- 7 (1) Any construction, alteration, painting, demolition, salvage,
- 8 renovation, repair, or maintenance of any building or structure,
- 9 including preparation and cleanup, that, by using or disturbing
- 10 lead-containing material or soil, may result in significant exposure
- 11 of employees to lead as determined by the standard adopted
- 12 pursuant to Section 6717.
- 13 ~~(b)~~
- 14 (2) The transportation, disposal, storage, or containment of
- 15 materials containing lead on site or at a location at which
- 16 construction activities are performed. ~~"Lead-related~~
- 17 (b) "Lead-related construction ~~work~~" work," as used in Sections
- 18 6717 to 6717.6, inclusive, does not include any activity related to
- 19 the manufacture or mining of lead or the installation or repair of
- 20 automotive materials containing lead.
- 21 SEC. 2. Section 6717.1 is added to the Labor Code, to read:

1 6717.1. (a) Any employer or contractor who will be engaging
2 in lead-related construction work, as defined in paragraphs (1) to
3 (7), inclusive, of subdivision (a) of Section 1532.1 of Title 8 of the
4 California Code of Regulations as adopted pursuant to Section
5 6717, or any successor to those provisions, shall apply for and
6 obtain a registration from the division before commencing work,
7 except as follows:

8 (1) For purposes of the registration under this section,
9 “lead-related construction work” means and refers to work
10 performed in the removal, demolition, or abatement of existing
11 materials and does not include the installation of new, previously
12 unused construction materials.

13 (2) An employer or contractor is not required to obtain
14 registration under this section to work on a job in which the amount
15 of lead-containing materials to be disturbed by the employer or
16 contractor is less than 100 square or linear feet, whichever is
17 applicable, or in which the amount of lead in the materials to be
18 disturbed is less than 0.5% by weight or 1.0 milligram per square
19 centimeter of surface area.

20 (b) An application for registration shall be accompanied by an
21 application fee in an amount to be estimated by the division to
22 equal the per-applicant cost of the registration program in excess
23 of the amount of moneys collected in renewal fees assessed
24 pursuant to Section 6717.3. These fees and renewal fees collected
25 pursuant to Section 6717.3 shall be deposited into the Lead
26 Contractor Registration Fund, which is hereby created. All moneys
27 in this fund shall be available, upon appropriation, for the purpose
28 of investigating, registering, and renewing registrations for
29 lead-related construction work.

30 (c) The application shall include all of the following information
31 and attachments with a declaration stating that the information,
32 attachments, and any other information provided by the applicant
33 are genuine, true, and correct to the best of the applicant’s
34 knowledge:

35 (1) Proof of a valid California contractor’s license.

36 (2) Proof of workers’ compensation insurance.

37 (3) Proof of sufficient employee health insurance coverage for
38 any medical surveillance costs imposed by Section 1532.1 of Title
39 8 of the California Code of Regulations, or any successor to that
40 regulation.

1 (4) *Proof that all training and certification requirements for*
2 *employees engaged in lead-related work pursuant to Section 1532.1*
3 *of Title 8 of the California Code of Regulations, or any successor*
4 *to that regulation, have been completed.*

5 (5) *Other information and attachments as the division*
6 *determines to be necessary to evaluate the health and safety of the*
7 *proposed employment and place of employment.*

8 (d) *Notwithstanding Section 6426, if, in a declaration required*
9 *by subdivision (c), a declarant willfully states as true any material*
10 *fact he or she knows to be false, that person shall be subject to a*
11 *civil penalty of up to ten thousand dollars (\$10,000). Any public*
12 *prosecutor may bring a civil action to impose the civil penalty.*
13 *The application for registration shall include a statement advising*
14 *declarants of the penalty authorized under this provision.*

15 (e) *Within 15 business days after the receipt of an application,*
16 *the division shall notify the registration applicant either that the*
17 *application is complete or what is necessary to complete the*
18 *application. The division shall notify the applicant that the*
19 *application is granted, or that it was denied with reasons for that*
20 *denial specified in the notice, within 30 business days after the*
21 *date of submission of a completed application.*

22 SEC. 3. *Section 6717.2 is added to the Labor Code, to read:*

23 6717.2. (a) *The division shall deny an application for*
24 *lead-related construction work registration if it determines, based*
25 *on available facts, including the information provided by the*
26 *employer or contractor in the application for registration, the*
27 *employer or contractor has failed to show that the conditions,*
28 *practices, means, methods, operations, or processes used or*
29 *proposed to be used will provide a safe and healthful place of*
30 *employment. The division shall consider the employer's or*
31 *contractor's compliance history with the division. The division*
32 *shall immediately notify the employer or contractor, in writing, of*
33 *the reasons for a denial of an application for registration, and*
34 *shall send a copy of that notification to the director.*

35 (b) *An employer or contractor may appeal the denial by the*
36 *division of an application for registration to the director. The*
37 *director or his or her designee shall select a place convenient to*
38 *the parties for the hearing, which shall be held within two working*
39 *days after the receipt of the employer's or contractor's appeal.*

1 *The employer or contractor shall have the burden of establishing*
2 *that it qualifies for registration.*

3 *(c) The director or his or her authorized designee shall preside*
4 *over the hearing, which shall be open to employees and any*
5 *employee representative or representatives. The employer or*
6 *contractor shall notify the employees or employee representative*
7 *or representatives of any appeal hearing a reasonable time prior*
8 *to the hearing. Proof of this notification by the employer or*
9 *contractor shall be provided at the hearing.*

10 *(d) The director's decision after an appeal hearing concerning*
11 *an application for registration shall be final unless a request for*
12 *rehearing is filed with the director within 10 days after the date*
13 *the director's decision is rendered, or unless the decision is*
14 *appealed to the courts as provided by law.*

15 *SEC. 4. Section 6717.3 is added to the Labor Code, to read:*

16 *6717.3. (a) A registration for lead-related construction work*
17 *shall be valid for one year after the date of issuance by the division.*

18 *(b) An employer or contractor engaged in lead-related*
19 *construction work shall annually file an application to renew its*
20 *registration with the division at least 30 days before the expiration*
21 *date of its current registration along with a renewal fee to be*
22 *established by the division. The renewal fee shall be deposited into*
23 *the Lead Contractor Registration Fund established by subdivision*
24 *(b) of Section 6717.1.*

25 *SEC. 5. Section 6717.4 is added to the Labor Code, to read:*

26 *6717.4. (a) The division may hold a hearing to determine if a*
27 *violation of a duty specified in Section 6717.1 has occurred. Notice*
28 *shall be given and the hearing conducted in accordance with the*
29 *Administrative Procedure Act (Chapter 5 (commencing with*
30 *Section 11500), Part 1, Division 3, Title 2, Government Code).*
31 *The division shall have all the powers granted by that chapter. If*
32 *the division determines on the basis of the hearing that a violation*
33 *has occurred, it shall order the violator to pay monetary penalties,*
34 *as follows:*

35 *(1) Five thousand dollars (\$5,000) for a first finding of a*
36 *violation for failing to register as required by Section 6717.1.*

37 *(2) Twenty thousand dollars (\$20,000) for a second or*
38 *subsequent finding of a violation of Section 6717.1.*

39 *(b) It is a defense to a proceeding under this section if the owner,*
40 *contractor, employer, public agency, or agent thereof acted under*

1 a belief that Section 6717.1 was inapplicable because no lead was
2 present and proves, by a preponderance of the evidence, that he
3 or she made a reasonable effort to determine whether lead was
4 present.

5 (c) The penalties under this section shall be in addition to any
6 other penalty or remedy provided by law.

7 SEC. 6. Section 6717.5 is added to the Labor Code, to read:

8 6717.5. The division, at any time, upon a showing of good
9 cause and after notice and an opportunity to be heard, may revoke
10 or suspend a lead-related construction work registration issued
11 by the division.

12 SEC. 7. Section 6717.6 is added to the Labor Code, to read:

13 6717.6. The program to register employers and contractors
14 who perform lead-related construction work established in Sections
15 6717 to 6717.6, inclusive, shall be funded solely from the funds in
16 the Lead Contractor Registration Fund. To the extent possible,
17 the division shall consolidate the administration of the program
18 to register employers and contractors who perform lead-related
19 construction work with the administration of the program to
20 register persons doing asbestos-related work.

21 SECTION 1. ~~Section 142.7 of the Labor Code is amended to~~
22 ~~read:~~

23 ~~142.7. (a) On or before October 1, 1987, the board shall adopt~~
24 ~~an occupational safety and health standard concerning hazardous~~
25 ~~substance removal work, so as to protect most effectively the health~~
26 ~~and safety of employees. The standard shall include, but not be~~
27 ~~limited to, requirements for all of the following:~~

28 ~~(1) Specific work practices.~~

29 ~~(2) Certification of all employees engaged in hazardous~~
30 ~~substance removal-related work, except that no certification shall~~
31 ~~be required for an employee whose only activity is the~~
32 ~~transportation of hazardous substances subject to the requirement~~
33 ~~for a certificate under Section 12804.1 of the Vehicle Code.~~

34 ~~(3) Certification of supervisors with sufficient experience and~~
35 ~~authority to be responsible for hazardous substance removal work.~~

36 ~~(4) Designation of a qualified person who shall be responsible~~
37 ~~for scheduling any air sampling, laboratory calibration of sampling~~
38 ~~equipment, evaluation of soil or other contaminated materials~~
39 ~~sampling results, and for conducting any equipment testing and~~
40 ~~evaluating the results of the tests.~~

1 ~~(5) Requiring that a safety and health conference be held for all~~
2 ~~hazardous substance removal jobs before the start of actual work.~~
3 ~~The conference shall include representatives of the owner or~~
4 ~~contracting agency, the contractor, the employer, employees, and~~
5 ~~employee representatives, and shall include a discussion of the~~
6 ~~employer's safety and health program and the means, methods,~~
7 ~~devices, processes, practices, conditions, or operations which the~~
8 ~~employer intends to use in providing a safe and healthy place of~~
9 ~~employment.~~

10 ~~(b) For purposes of this section, "hazardous substance removal~~
11 ~~work" means cleanup work at any of the following:~~

12 ~~(1) A site where removal or remedial action is taken pursuant~~
13 ~~to either of the following:~~

14 ~~(A) Chapter 6.8 (commencing with Section 25300) of Division~~
15 ~~20 of the Health and Safety Code, regardless of whether the site~~
16 ~~is listed pursuant to Section 25356 of the Health and Safety Code.~~

17 ~~(B) The federal Comprehensive Environmental Response,~~
18 ~~Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et~~
19 ~~seq.).~~

20 ~~(2) A site where corrective action is taken pursuant to Section~~
21 ~~25187 or 25200.10 of the Health and Safety Code or the federal~~
22 ~~Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec.~~
23 ~~6901 et seq.).~~

24 ~~(3) A site where cleanup of a discharge of a hazardous substance~~
25 ~~is required pursuant to Division 7 (commencing with Section~~
26 ~~13000) of the Water Code.~~

27 ~~(4) A site where removal or remedial action is taken because a~~
28 ~~hazardous substance has been discharged or released in an amount~~
29 ~~that is reportable pursuant to Section 13271 of the Water Code or~~
30 ~~the federal Comprehensive Environmental Response,~~
31 ~~Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et~~
32 ~~seq.). "Hazardous substance removal work" does not include work~~
33 ~~related to a hazardous substance spill on a highway.~~

34 ~~(e) Until the occupational safety and health standard required~~
35 ~~by subdivision (a) is adopted by the board and becomes effective,~~
36 ~~the occupational safety and health standard concerning hazardous~~
37 ~~substance removal work shall be the standard adopted by the~~
38 ~~federal government and codified in Section 1910.120 of Title 29~~
39 ~~of the Code of Federal Regulations. In addition, before actual work~~
40 ~~is started on a hazardous substance removal job, a safety and health~~

- 1 ~~conference shall be held that shall include the participants and~~
- 2 ~~involve a discussion of the subjects described in paragraph (5) of~~
- 3 ~~subdivision (a).~~